STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2014
v	No. 314441 Wayne Circuit Court
JONATHAN ALEX POSEY, Defendant-Appellant.	LC No. 12-006947-FH

Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of possession of a firearm by a felon (felon-in-possession), MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. For the reasons stated below, we affirm.

I. FACTS

On May 24, 2012, Detroit Police officers pulled over defendant for speeding through a city neighborhood. While effecting the traffic stop, one of the officers saw defendant attempt to "stuff" an object between the seat and armrest of his car. After defendant got out of the vehicle, the officer searched the car for the object defendant had placed between the seats, and found a loaded .380 semi-automatic firearm. The officers then arrested defendant. After trial, a jury found him guilty of violating MCL 750.224f, 750.227, and 750.227b.

On appeal, defendant claims that the trial court erred when it: (1) made its findings of fact; and (2) denied his motion to suppress the firearm.

II. ANALYSIS

A. FINDINGS OF FACT[1]

[1] We review findings of fact made by a trial court at a hearing on a motion to suppress evidence for "clear error." *People v Hill*, 299 Mich App 402, 405; 829 NW2d 908 (2013). A finding of

A trial court is not required to "explain its reasoning and state its findings of fact with respect to pretrial motions." *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). "Resolution of facts about which there is conflicting testimony is a decision for the trial court. A trial court's resolution of disputed facts is given deference by this Court." *Id*. Moreover, a trial court may rely on preliminary examination testimony for a hearing on a motion to suppress, pursuant to the parties' stipulation. See *People v Kaufman*, 457 Mich 266, 275–756; 577 NW2d 466 (1998).

Here, defendant claims that the trial court did not properly address his "furtive gesture"—i.e., his stuffing of the firearm between the seats of his car—during the hearing on his motion to suppress. At defendant's preliminary examination, the arresting officers testified that they observed defendant, who was still driving at the time, make a furtive gesture downwards, after which his vehicle then hit the curb. The furtive gesture led the officers to believe, based on their experience, that defendant attempted to hide an object. After it heard this testimony and watched the dashboard video, the trial court denied defendant's motion to suppress and stated:

> Well, the officers are all considerably younger than I am. I have to believe that on site of the stop that their visual acuity allowed them to make a better observation than I can viewing the [sic] in the car video. And based on the circumstances to which they testified at the preliminary exam of July 18, 2012, the motion to suppress is denied. I believe they had reasonable suspicion and the furtiveness of the gesture is what it is. It's not subject to degrees of furtiveness. It's simply subject to their observation at the time, date and place.

Again, we give deference to the trial court's determination that the officers' testimony was more reliable than the dashboard video. *Shields*, 200 Mich App at 558. And the trial court obviously addressed defendant's furtive gesture. His argument that the court did not address this issue is therefore unavailing.

B. MOTION TO SUPPRESS

Both the Fourth Amendment of the United States Constitution and Article 1 of the Michigan Constitution protect persons against unreasonable searches and seizures. *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). The "Michigan Constitution is to be construed to provide the same protection as that secured by the Fourth Amendment, absent compelling reason to impose a different interpretation." *People v Slaughter*, 489 Mich 302, 311; 803 NW2d 171 (2011) (footnotes omitted).

Pursuant to the Fourth Amendment, police must obtain a warrant before conducting a search. *People v Levine*, 461 Mich 172, 178; 600 NW2d 622 (1999). However, there are several

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fact is "clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011) (internal citations omitted). However, "matters regarding the application of facts to constitutional principles, such as the right to be free from unreasonable searches and seizures, are reviewed de novo." *Hill*, 299 Mich App at 405.

exceptions to the warrant requirement, which include probable cause to search an automobile. *Id*. at 179. If the contact between a defendant and the police is initiated through a traffic stop, the "police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). Police officers generally must have probable cause to actually search a vehicle. *Levine*, 461 Mich at 178. However, if an officer has a "reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts" lead him to believe that a suspect is "dangerous" or could "gain immediate control of weapons," then he may conduct a search of the passenger compartment of the vehicle, limited to the areas "in which a weapon may be placed or hidden . . . ." *Michigan v Long*, 463 US 1032, 1049; 103 S Ct 3469; 77 L Ed 2d 1201 (1983). A defendant's furtive gestures, coupled with other factors, including knowledge of the suspect's involvement in criminal activity and general police experience, is sufficient to establish a reasonable belief that a defendant may be dangerous and have access to a weapon. *People v Champion*, 452 Mich 92, 117; 549 NW2d 849 (1996).

Here, defendant unconvincingly argues that the trial court erred when it denied his motion to suppress the firearm. Because defendant was speeding when the police officers drove past him, he was responsible for a civil infraction, and the officers had cause to pull defendant over.[2] And the officers acted on a reasonable belief when, based on the furtive gesture made by defendant and their experience with interpreting such gestures, they searched defendant's vehicle for weapons. Therefore, it was permissible for them to conduct a limited warrantless search of the front passenger area, where defendant could have hidden a weapon. Accordingly, the trial court correctly denied defendant's motion to suppress.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

[2] Under MCL 257.629(6), "[a] person who exceeds a lawful speed limit established under this section is responsible for a civil infraction."